IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 926 OF 2006

Rajkanasen Bhansali & anr. ... Petitioners.
Versus.
Mrs.Saroj widow of Ashok Gupta
and others. ... Respondents.

Ms.Suman Jain for the Petitioners.

Ms.Kavita Lalwani for the Respondent No.1.

Shri Jayesh B.Kocheta for the Respondents Nos.2 to 5.

Shri A.S.Shitole, A.P.P.for State.

WITH

CRIMINAL APPLICATION NO. 2046 OF 2006

Jugraj Himmatlal Palresha & others. ... Applicants.
Versus.
Smt.Saroj Ashok Gupta & others. ... Respondents.

Shri Jayesh B.Kocheta for the Applicants.

Ms.Suman Jain for Respondent No.3.

Ms.Kavita S.Lalwani for Respondent No.1.

Mrs.M.H.Mhatre, A.P.P. for State.

CORAM : ABHAY S.OKA, J.

DATED : 13th October, 2006.

P.C.:

1. Rule. The Respondents waive service. Taken up for hearing forthwith. The prayer in Criminal Writ Petition No.926 of 2006 is for quashing the private complaint filed by the 1st Respondent. The Petitioners are accused Nos.1 and 2. In criminal Application No.2046 of 2006, the prayer is for quashing the same

complaint and the Applicants are the original Accused Nos.3 to 6.

2. In the private complaint filed by the 1st Respondent she has alleged commission of offence under section 409 read with section 34 of the Indian Penal Code. According to the case of the 1st Respondent she was desirous of purchasing a flat and therefore, an earnest amount was paid by her to M/s.Nandraj Builders of which accused persons are the partners and business associates. The allegation in the complaint is that the accused persons did not return the amount taken from the 1st Respondent.

3. The learned Advocates appearing for the parties have tendered on record consent minutes of order recording the agreement/settlement between the parties. The consent minutes of order record that the accused persons have paid a sum of Rs.4 lakhs to the 1st Respondent-Complianant in full and final settlement of her claim. The consent minutes of order are marked "X" for identification and taken on record.

4. The 1st Respondent-complainant has filed affidavits in both the matters. The affidavits are taken on record and marked "Y-1" and "Y-2" respectively for identification. In the said affidavits the 1st Respondent has recorded that there is a complete

settlement between the parties and she has received a sum of Rs.4 lakhs from the accused persons. The process has been issued by the learned Magistrate on the private complaint. In view of the overall settlement between the parties, considering the nature of private complaint, the continuation of the criminal proceedings will cause harassment to both the parties. Therefore, this is a fit case where power under section 482 the Code of Criminal Procedure 1973 will have to be exercised and the complaint will have to be quashed.

5. Hence the following order is passed:

(i) Rule issued in Criminal Writ Petition No.926 of 2006 is made absolute in terms of prayer clause (c) of the petition.

(ii) Rule issued in Criminal Application No.2046 of 2006 is made absolute in terms of prayer clause (b) of the Application.

Judge.